GPN-J.332-ARCHB-8.94-1310500-ALA4 Spl-H.C.A.S.C.D.79e

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2057 OF 1998

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. Dilip Bodke for Petitioner.

Mrs. S.S. Bhende, A.G.P. for Respondent Nos. 1 to 4.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 02, 2005

P.C.

. The principal contention urged on behalf of the petitioner is that land survey No. 82/2 admeasuring 1 H 64R which is included for the purpose of working out his calculation of his land holdings admeasuring 3 Hec. 54 Rs does not belong to him. He has relied on various proceedings. It is his contention that the suit land belongs to Deosthan known as Padmavatidevi Deosthan and in fact certificate issued in his favour under Section 32G of the Tenancy Act was set

aside in appeal preferred being TNC/Appeal/ 26 of 1989 decided on 21.3.1990 which is annexed to the petition. If the said argument is accepted then the area of holding of the Petitioner works out to 1 Hect. 90 Rs which is less than 6 acres which is a slab for acquisition.

. No reply has been filed on behalf of the Respondents. Their counsel however, points out that from the document made available to her, the holdings of the petitioner works out to 4 Hect. 12 Rs including 1 Hect. 64 Rs of Survey NO. 82/2. If this is excluded, the holding of the petitioner will work out to 3 Hect. 28 Rs in which event the excess area can be acquired. The Petitioner is in possession pursuant to interim relief granted by this court. We do not propose to go into that controversy as to what is actual holdings of the petitioner as we propose to remand the matter. All that we can say that it is common ground that Survey No. 82/2 would be excluded from the petitioner's holdings and the petitioner's holdings be calculated less City Survey No. 82/2. In the light of that, the following order:

. Petition made absolute in terms of Prayer Clause (b). The matter is remanded back to the competent authority either amongst Respondent Nos. 3 and 4 who are competent to work out the holdings of the petitioner and only in the event petitioner's' holdings are in excess, after excluding the land as set out in the body of the judgment, it will be open thereafter to issue fresh declaration under Section 6 and thereafter the award. On behalf of the Petitioner, the learned counsel has made a statement which is recorded that they will not raise any objection to the declaration being issued on the ground that there is delay. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)